IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1265 of 2007

S.Maruthupandiyan .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Collector
and District Magistrate
Tiruvarur District
Tiruvarur. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus to directing the respondents to produce the detenu Sankar @ Iyar before this Honourable Court now confined in Central Jail, Trichy and call for the records of the respondents relating to the order of detention vide proceedings in C.O.C.No.15/07 dated 27.7.2007 and set aside the same and set him at liberty as stated therein.

For Petitioner : Mr.M.Simon Jayakumar

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Sankar alias Iyar, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders,

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Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the petitioner, who is elder father of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the detenu before this Court, now confined in Central Jail, Trichy, and to call for the records of the respondents relating to the order of detention vide proceeding COC No.15/2007, dated 27.7.2007, to set aside the same and to set the detenu at liberty.

3.1. The order of detention dated 27.7.2007 was passed on the basis of ground case in Crime No.330 of 2007 for alleged commission of offences under Sections 4(1)(i), 4(1)(aaa) read with 4(1-A) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 17.7.2007 when the Inspector of Police, Thiruvarur Town proceeded to watch the activities of prohibition offenders, they found the detenu selling arrack, as the detenu tried to escape, the police party surrounded and apprehended him. The contraband was seized. The samples of arrack seized were sent for chemical analysis and the report reveals that it contains 4.6 mg% w/v of atropine, a poisonous substance and consumption of the arrack mixed with atropine would be fatal to life.

3.2. Apart from the above, the detaining authority also took note of an four adverse case pending against the detenu, viz., Crime Nos.229 of 2006, 28 and 221 of 2007 on the file of Thiruvarur Prohibition Enforcement Wing; and Crime No.74 of 2007 on the file of Kudavasal Police Station, all for the offences under Section 4(1)(aaa) read with 4(1-A) of the Tamil Nadu Prohibition Act.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The learned counsel for the petitioner challenges the order of detention on the ground of non-application of mind on the part of the detaining authority to the fact that while the detenu was arrested on 17.7.2007 at 0900 hours and the First Information Report was registered only at 1230 hours, in the arrest report there is a mention about Crime No.330 of 2007.

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6. From the materials available on record, as contended by the learned counsel for the petitioner, it is evident that the detenu was arrested on 17.7.2007 at 0900 hours and the First Information Report was registered at 1230 hours, but in the arrest report the Crime No.330 of 2007 is stated. There is no explanation on the part of the detaining authority as to how the crime number came to be mentioned in the arrest report, which was three and half hours earlier than the lodging of the F.I.R. The police have not filed any affidavit as to how they got the crime number, viz., by using wireless or cellphone to contact the relevant police station to ascertain the crime number. The absence of any such affidavit filed on behalf of the sponsoring authority and the failure of the detaining authority to get an explanation on this aspect vitiates the order of detention.

For the aforesaid reason, the petition is liable to be allowed and hence, the same is allowed. The order of detention dated 27.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in any other crime. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Secretariat, Chennai-9.

2.The District Collector
and District Magistrate
Tiruvarur District
Tiruvarur.

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3. The Superintendent
Central Prison, Trichirappalli.

4. The Joint Secretary to Government
Public (Law and order)
Fort Saint George, Chennai-9.

5. The Public Prosecutor,
High Court, Madras-104.

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